IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 5 OF 2005

Shri Pradeep Mashelkar,
s/o Krishna Mashelkar,
r/at H. No. 22, Kodalwado,
Karapur Tisk,
Sanquelim, Goa. ... Applicant

versus

State, through Police Inspector,
Bicholim Police Station. ... Respondent

Mr. Nitin Sardessai, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 6TH OCTOBER, 2005.

ORAL JUDGMENT

The accused in C.C. No.20/S/2000/A assails the correctness and legality of the conviction/sentence imposed upon him by the learned J.M.F.C., Bicholim by Judgment/Order

dated 18-11-2003 and confirmed by the learned Sessions Judge, Panaji, by her Judgment/Order dated 29-1-2005.

2. The case of the prosecution was that on 5-12-1999 at about 14.45 hours at Kodalwada, Sanquelim, the accused abused complainant-PW4/Mohandas Savoikar, his cousin brothers PW1/Suresh Savoikar and PW2/Balkrishna Savoikar with filthy words and threw acid on them causing grievous injuries. A charge-sheet under Sections 326, 324 and 504 I.P.C. was filed against the accused. After charge was framed, the trial was completed in which the prosecution has examined 9 witnesses.

3. The learned J.M.F.C., Bicholim, sentenced the accused under Section 326 I.P.C. to undergo 3 months S.I. and to pay a fine of Rs.2,500/-, in default to undergo 1 1/2 month S.I. The accused was sentenced under Section 324 I.P.C. to pay a fine of Rs.1,500/- in default to undergo 1 month S.I. and under Section 504 I.P.C. to pay a fine of Rs.500/- and in default to undergo 10 days S.I. The learned J.M.F.C. also ordered that a sum of Rs.500/- each be paid to PW2/Balkrishna Savoikar and

PW4/Mohandas Savoikar and Rs.2,500/- to PW1/Suresh Savoikar, in case the fine imposed is recovered.

4. At the hearing of this revision, Mr. Nitin Sardessai, the learned Counsel appearing on behalf of the accused has submitted that the injuries on PW1/Suresh Savoikar, PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar were superficial in nature and, therefore, the accused could not have been convicted and sentenced under Section 326 I.P.C. Mr. Sardessai, the learned Counsel has further submitted that the acid container which was allegedly attached from the house of the accused was not sealed and, therefore, the opinion of PW9/the Chemical Analyser that what was attached from the house of the accused was found to be acid would be immaterial. As per Mr. Sardessai, the learned Counsel, the prosecution had proved at the most an offence under Section 323 I.P.C.

5. Both the Courts below have accepted the evidence of the said 3 injured witnesses, namely, PW1/Suresh Savoikar, PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar which was corroborated by medical evidence of PW3/Dr. Karpe and the

medical certificate Exh.PW7/A issued by Dr. Madhu Mohan and which certificate, in his absence was produced through PW7/Nalini Madkaikar, the medical Record Keeper of the Goa Medical College. Both the Courts below have placed reliance on the said certificate/Exh.PW7/A by placing reliance on the case of **Prithichand** v. **State of H.P.**(AIR 1989 SC 702). In Exh.PW7/A, Dr. Madhu Mohan had described the injuries on PW1/Suresh Savoikar as grievous in nature. In my view, the mere fact that the acid container attached from the house of the accused was not sealed by the Head Constable who had attached the same cannot be considered to be a lapse which would be sufficient to discard the story of the prosecution as stated by the 3 injured witnesses and corroborated by the medical opinion of PW3/Dr. Karpe.

6. Indeed, soon after the incident which took place at about 2.45 p.m., the said 3 injured witnesses were examined at 3 p.m. at the Cottage Hospital at Sanquelim by PW3/Dr. Karpe with history of acid burns. As per PW3/Dr. Karpe, PW1/Suresh Savoikar had burn marks on face, nose, both the eye lids and neck region and the frontal scalp above the eyes as well as on the wrist joint of both the elbows and he was referred to the Goa Medical College where, as per the said certificate Exh.PW7/A was admitted for a period of 5 days from 5-12-1999 to 9-12-1999 and was found with

7% of acid burns on the face. PW3/Dr. Karpe found that PW2/Balkrishna Savoikar also had burns on the right wrist joint on the interior surface. Likewise, PW3/Dr. Karpe found on PW4/Mohandas Savoikar acid burns on the left elbow joint, left interior and posterior right forearm. PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar were sent home after giving first aid and they were not referred to Goa Medical College as they did not require any treatment but were only advised to visit the Cottage Hospital at Sanquelim for follow up treatment which they did. As per PW3/Dr. Karpe, the injuries on PW1/Suresh Savoikar were superficial in nature.

7. The learned J.M.F.C., Bicholim, referred to the commentary "The essentials of Forensic Medicine and Toxicology by Dr. K. S. Narayan Reddy(19th Edition 2000) wherein the learned author had stated, and in my view rightly, that it is the Court that must decide whether the injury is simple or grievous and the duty of the medical witness is only to describe the facts and not to classify the hurt. What is a grievous hurt has been defined in Section 320 of the Indian Penal Code. PW1/Suresh Savoikar had remained in hospital for a period of 5 days and, therefore, his case could not have come within Section 320 I.P.C., Clause Eighthly. It appears that both the Courts below have tried to bring in the case of PW1/Suresh

Savoikar within Clause Sixthly which designates permanent disfiguration of the head or face to be a grievous hurt. The learned J.M.F.C. had rightly observed that although, PW1/Suresh Savoikar had stated that he had undergone plastic surgery the said statement could not have been accepted. Indeed, PW1/Suresh Savoikar had not produced any medical evidence to support his statement that he had undergone plastic surgery and even otherwise, it was a matter of doubt whether PW1/Suresh Savoikar had to undergo plastic surgery at all because the injury was described by PW3/Dr. Karpe as superficial in nature. However, the learned J.M.F.C., Bicholim, proceeded to observe that if sulphuric acid could come into contact with human skin there was possibility of permanent scars and further observed that the disfigurement was done and the same was corrected with the help of plastic surgery. What the learned J.M.F.C. failed to see whether throwing of the acid had in fact left any permanent scars on PW1/Suresh Savoikar. The learned Sessions Judge observed that the evidence of PW1/Suresh Savoikar indicated that he had sustained permanent scars on his face on account of acid burns and the medical certificate at Exh.PW7/A had only corroborated his testimony.

8. Mr. S. N. Sardessai, the learned Public Prosecutor, appearing on behalf of the Respondent was unable to point out any statement in the

evidence of PW1/Suresh Savoikar which indicated that he had sustained permanent scars on his face and as already stated once it was opined by PW3/Dr. Karpe that the injuries were superficial and in the absence of any other medical evidence that PW1/Suresh Savoikar had undergone any plastic surgery, it could not be accepted that either PW1/Suresh Savoikar had any disfigurement of his face as observed by the learned J.M.F.C. or that he had any permanent scars on his face as observed by the learned Sessions Judge. Unless the nature of scar is described, one cannot jump to the conclusion that each and every scar whether permanent or not amounts to disfigurement of the face. In fact, one fails to understand as to how both the Courts below could have come to the conclusion that there was either disfigurement of the face of PW1/Suresh Savoikar or permanent scars on his face in the absence of any medical evidence to that effect having been produced by the prosecution. The prosecution had failed to bring out its case either under Clauses Sixthly or Eighthly of Section 320 I.P.C. which describes or designates what are grievous hurts. The conviction of the accused under Section 326 I.P.C., therefore, cannot be sustained.

9. The injured witnesses have stated that the accused went inside the house and had come out with the container of white colour and threw some liquid on them and PW1/Suresh Savoikar had further stated that his

eyes were affected and he could not see and his entire face was burning and then he realised that what was thrown on him by the accused was acid because of the burning sensation which he felt. PW3/Dr. Karpe has not only stated that he examined the said 3 patients/injured with history of acid burns but has also given his opinion that the injuries were due to acid burns and were within 6 hours duration which were superficial in nature. In my view, the facts stated by the said injured witnesses and as corroborated by PW3/Dr. Karpe were sufficient to prove a case against the accused under Section 324 I.P.C. that is to say for having caused hurt by corrosive substance. The conviction of the accused, therefore, has to be scaled down from Section 326 I.P.C. to Section 324 I.P.C.

10. The learned J.M.F.C. had declined to extend the benefit of the Probation of Offenders Act, 1958 probably because the offence committed by the accused was held by her to be under Section 326 I.P.C. which was punishable with life. However, the learned J.M.F.C. had rightly noted that the accused was a first offender and it has been submitted now by Mr. Sardessai, the learned Counsel that the accused then was of 37 years of age. The learned J.M.F.C. had also noted that there was no previous conviction against him and the incident had occurred at the spur of the moment and on account of the property dispute between the accused,

PW1/Suresh Savoikar and PW3/Balkrishna Savoikar. At the same time, the learned Magistrate felt that flinging of sulpuric acid on humans could not be taken lightly as sulphuric acid was dangerous corrosive substance. In my view, considering the facts of the case including the age of the accused and other circumstances taken note of by the learned J.M.F.C., this would not be a fit case to extend the benefit of the Probation of Offenders Act, 1958 to the accused. Consequently, the conviction and sentence under Section 504 I.P.C. is maintained. The conviction under Section 326 I.P.C. is reduced to Section 324 I.P.C. The accused is, therefore, hereby sentenced under Section 324 I.P.C. to undergo S.I. for one day-till rising of the Court. In addition, the accused is directed to pay compensation to PW1/Suresh Savoikar, PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar as follows:-

Rs.8000/- to PW1/Suresh Savoikar and Rs.5000/- each to PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar.

In default of payment of Rs.18,000/-, the accused shall undergo S.I. for a period of six months.

11. As a result, this revision is partly allowed on the above terms.

Consequently, the conviction and sentence is modified in the manner indicated above. The accused to deposit the fine as well as the compensation within a period of fifteen days before the learned J.M.F.C., Bicholim, who is directed to pay the said compensation to PW1/Suresh Savoikar, PW2/Balkrishna Savoikar and PW4/Mohandas Savoikar as indicated hereinabove.

12. The imprisonment of one day-till rising of the Court to be certified by the Court Superintendent. Bail Bonds of the accused to stand discharged.

N. A. BRITTO, J.

RD.